

# **HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

## **SECTION 3 PLAN**

**THE CITY OF DURHAM, NORTH CAROLINA  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
February 2012**

### **Section 3 Purpose**

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) requires the City of Durham to ensure that employment and other economic and business opportunities generated by assistance from the Department of Housing and Urban Development (HUD), to the greatest extent feasible, are directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and Business Concerns that provide economic opportunities to low and very low income persons.

### **Definitions**

**Section 3 residents** are persons who live in the area where a HUD-assisted project is located and who have a household income that falls below HUD's income limits (see current HUD's income limits). Low-income is defined as 80% or below the area median income of the area. Very-low income is defined as 50% or below the median income of the area. See accompanying Table for income limits set by HUD for the Durham Chapel Hill MSA area.

**Section 3 Business Concern** is a business/firm that is:

- Fifty-one percent (51%) or more owned by Section 3 residents; or
- Employs Section 3 residents for at least thirty percent (30%) of its full-time, permanent staff; or
- Provides evidence of a commitment to subcontract to Section 3 Business Concerns, twenty-five percent (25%) or more of the dollar amount of the awarded contract.

**New hire** is a full-time employee for a new permanent, temporary or seasonal position that is generated from the expenditure of HUD funds covered by the Section 3 regulations.

**Recipient.** The City of Durham is the direct recipient of federal funding from the United States Department of Housing and Urban Development.

**Subrecipient** is an organization receiving HUD funds from the City of Durham (recipient) for housing and community development related projects.

**Contractor** is a business with contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

**Subcontractor** is a business which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

**Section 3 covered projects** include the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public housing which includes buildings or improvements (regardless of ownership), and public improvement construction assisted with housing and community development assistance.

**Section 3 covered assistance** is assistance provided under any HUD housing or community development program that is expended for work arising in connection with housing rehabilitation, construction, or other public construction project.

**Section 3 Clause** is the contract provision set forth in 24 CFR Part 135.383.

**Service area** is the area where a HUD-assisted project is located. It is a geographical area in which the persons benefiting from the Section 3 covered project reside. For the City of Durham, the city limits are defined as the Section 3 service area.

### **Section 3 Contracting Policy and Procedure**

The City of Durham will incorporate Section 3 in all procurements generated for use with HUD funding and follow goal requirements set forth in 24 CFR Part 135 for awarding contracts to Section 3 Business Concerns.

All contractors/businesses seeking Section 3 preference must before submitting bids/proposals to the City be required to complete certifications, as appropriate, as acknowledgment of the Section 3 contracting and employment provisions required by this section to the City of Durham's Community Development Agency.

### **Section 3 Plan**

The City of Durham has developed this Section 3 Action Plan to identify the applicability of provisions of 24 CFR Part 135 objectives, and actions that will be implemented to ensure compliance with the requirements of Section 3. Section 3 applies to direct financial assistance awarded, provided, or otherwise made available under any program administered by HUD, in the form of loans, grants, (including Community Development Block Grants), cooperative agreements, subsidies, or other types of financial assistance provided in aid of housing, urban planning, development, redevelopment or general public or community facilities, and public improvement construction projects.

### **Section 3 Thresholds**

Funding thresholds are minimum dollar amounts that trigger Section 3 requirements. Section 3 requirements only apply when any of the following thresholds are reached:

- **Subrecipient threshold:** A subrecipient that receives community development or housing assistance covered by Section 3 which the amount of assistance exceeds \$200,000.
- **Contract and subcontractor thresholds:** Section 3 requirements apply to contractors and subcontractors performing work on the Section 3 covered project(s) for which the total amount of assistance exceeds \$100,000; and the contract and subcontract exceeds \$100,000.

Professional service contracts (e.g. architectural services) are covered under Section 3 provided that the work to be performed by the professional is for work generated by the expenditure of Section 3 covered assistance or for work arising in connection with Section 3 project (e.g. housing rehabilitation, housing construction, or other public construction project.)

Section 3 covered contracts do not include contracts issued for the purchase of materials, supplies, or equipment, unless installation “work” is involved.

- **Threshold met for subrecipients, but not contractors or subcontractors:** If a subrecipient receives Section 3 covered housing and community development assistance in excess of \$200,000, but no contract exceeds \$100,000, the Section 3 preference requirements only apply to the operation of the subrecipient (see Responsibilities.)

### **Numerical Goals:**

If a subrecipient, contractor or subcontractor has the need to hire new persons to complete the Section 3 covered contract or needs to subcontract portions of the work to another business, they are required to direct their newly created employment and/or subcontracting opportunities to Section 3 residents and Business Concerns.

Federal regulations set numerical goals for all HUD jurisdictions for the hiring/training of Section 3 residents and contracting with Section 3 Business Concerns on HUD assisted projects. If the following numerical goals are not reached, subrecipients, contractors and subcontractors shall demonstrate a “Good Faith Effort” to achieve the numerical goals.

**Training and Employment: Goals are based on the percentage of new hires.**

1. Housing assistance: employ Section 3 residents as 10% of the aggregate number of new hires for each year over the duration of the Section 3 project.
2. Community development assistance: Employ Section 3 residents as 30% of the aggregate number of new hires for each year over the duration of the Section 3 project.

**Contracts: Each contractor and subcontractor that meets the threshold requirements may demonstrate compliance with the requirements of Section 3 by committing to award Section 3 Business Concerns:**

1. At least 10% of the total dollar amount for all Section 3 covered contracts for building trades work for housing rehabilitation, housing construction and other public works construction.
2. At least 3% of the total dollar amount of all non-construction contracts covered under the Section 3 requirements.

Section 3 residents are not guaranteed employment and Section 3 Business Concerns are not guaranteed contract opportunities. Section 3 residents must demonstrate that they meet the qualifications for new employment opportunities created as a result of the expenditure of covered assistance. Likewise, Section 3 Business Concerns must submit evidence to the satisfaction of the party awarding the contract to demonstrate that they are responsible firms and have the ability to perform successfully under the terms and conditions of the proposed contract.

Contract awards shall only be made to responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract. Preference to Section 3 Business Concerns means that a recipient's or contractor's procurement procedure includes methods to provide preference to Section 3 Business Concerns. Accordingly, if a Section 3 Business Concern is a responsible bidder, but their bid price is slightly higher than a non-Section 3 firm, the subrecipient agency may give preference to the Section 3 business in an effort to meet its numerical goals annually as outlined 24 CFR Appendix to Part 135 Section III.

## **Responsibilities**

### **A) Subrecipient**

1. A subrecipient must comply with Section 3 requirements in its own operation. This responsibility includes:
  - a) Notifying Section 3 residents and Business Concerns about jobs and contracts generated by Section 3 covered assistance so that they may submit bids/proposals for available contracts and jobs opening with the subrecipient.
  - b) Notify potential contractors of Section 3 requirements;
  - c) Include the Section 3 Clause in all applicable contracts;
  - d) Document action(s) taken to meet the numerical goals;
  - e) Complete and submit the following reports when the assistance exceeds \$200,000: Subrecipient – *Contract Award Summary Report*.
2. Subrecipients have a responsibility to “ensure compliance” of their contractors and subcontractors. This means that a subrecipient must:
  - a) Notify contractors of their responsibilities under Section 3 including, but not limited to, incorporating the Section 3 Clause in all contract documents;
  - b) Refrain from contracting with subcontractors as to whom they have received notice or have knowledge that the subcontractors have been found in violation of the requirements of 24 CFR Part 135;
  - c) Respond to Section 3 complaints;
  - d) Cooperate with the City of Durham and HUD in obtaining compliance of contractors and subcontractors when allegations are made of non-compliance;
  - e) Complete and submit the following reports when the assistance Exceeds \$200,000: Subrecipient – *Contract Award Summary Report*.

**B) Contractors**

- 1) Notify subcontractors of their responsibilities under Section 3 including, but not limited to, incorporating Section 3 Clause in subcontractor documents;
- 2) Refrain from contracting with subcontractors as to whom they have received notice or have knowledge that the subcontractors have been found in violation of the requirements of 24 CFR Part 135;
- 3) Maintain records that document a good faith effort to utilize Section 3 residents and Business Concerns. This is required of both contractor and subcontractor;
- 4) Document action(s) taken to meet the numerical goals;
- 5) Complete and submit the *Contractor Section 3 Certification Form* prior to bid opening;
- 6) Complete and submit the following reports/forms when the assistance exceeds \$100,000: *Contractor Estimated Work Force Breakdown*, *Contractor Section 3 Certification Form*, *Income Certification Form for Section 3 Residents* should low income residents of the City of Durham submit a job application for a new hire position and *New Hires Section 3 Monthly Compliance Form*.

**C) City of Durham**

The City shall assist the subrecipients, contractors and subcontractors by performing the following activities:

- 1) Notifying all applicants for CDBG, HOME, NSP and other HUD funded projects of the Section 3 applicability;
- 2) "Section 3 Clause" shall be included in all applicable bids and contracts;
- 3) Providing clarification of the Section 3 requirements;
- 4) Providing the appropriate guidelines and forms;
- 5) Assisting subrecipients, contractors and subcontractors with notifying Section 3 residents and Business Concerns of new opportunities as outlined in "Good Faith Effort";
- 6) Monitoring, verifying and notify with regard to compliance;
- 7) Moderate Section 3 complaints;

8) Collect all applicable forms and reports;

9) Report all required data to HUD.

### **Section 3 Clause**

The City shall include the “Section 3 Clause” in all applicable covered bids and distribute the appropriate forms related to the below paragraph to all interested parties prior to the opening of bids and entering into contracts.

At a minimum, contractors shall complete the following tasks as part of the bid preparation process. Verification by the city will be part of the bid review process. The tasks will ensure the contractor’s understanding of the applicability of Section 3 requirements to the project.

1. Complete the “Contractor Certification” form indicating the contractor’s status as a Section 3 business concern and employment of Section 3 residents.
2. Complete the “Contracting Goals” form indicating the preliminary estimation of new employment or contracting opportunities generated due to the proposed HUD funded activity and the Section 3 numerical goals associated with training and employment opportunities.
3. Complete the “Preference for Section 3 Residents & Business Concerns” form demonstrating the contractor’s understanding of Section 3 requirements.

All Section 3 covered contracts shall include the following clause (referred to as the Section 3 Clause):

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.



- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligation under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

### **Complaint Procedure**

In an effort to resolve complaints generated due to non-compliance through an Internal process, the City of Durham encourages submittal of such complaints to the Director of the Department of Community Development as follows:

- Complaints of non-compliance shall be provided in writing and must contain the name of the complainant and a brief description of the alleged violation of 24 CFR Part 135.
- Complaints must be filed within thirty (30) days after the complainant becomes aware of the alleged violation.

- An investigation will be conducted if the complaint is found to be valid. The City will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.

If complainants wish to have their concerns considered outside the City of Durham, a complaint may be filed with:

Assistant Secretary for Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
451 Seventh Street, SW  
Washington, DC 20410

The complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

### **Section 3 Reporting**

#### **Annual Reporting**

The City of Durham through the Department of Community development will report to HUD annual accomplishments regarding employment and other economic opportunities provided to low and very low income persons under Section 3. Form HUD-60002 is currently being utilized for reporting accomplishments. This form may be changed and updated from time to time as required by HUD and 24 CFR Part 135.

#### **Monthly Reporting**

General contractors and sub-contractors are required to submit to the City a new hires Section 3 compliance form on a monthly basis on the New Hires Section 3 Monthly Compliance Form.

## 2011 HOME Income & Rent Limits - Durham Metro Area

### INCOME Limits based on NUMBER IN HOUSEHOLD - Durham Metro Area - Published 5.31.2011

% AMI	1	2	3	4	5	6	7	8+
<b>25%</b>	\$11,875	\$13,583	\$15,292	\$16,958	\$18,333	\$19,708	\$21,042	\$22,417
<b>30% (extremely low)</b>	\$14,250	\$16,300	\$18,350	\$20,350	\$22,000	\$23,650	\$25,250	\$26,900
<b>40%</b>	\$19,000	\$21,733	\$24,467	\$27,133	\$29,333	\$31,533	\$33,667	\$35,867
<b>50% (very low)</b>	\$23,750	\$27,150	\$30,550	\$33,900	\$36,650	\$39,350	\$42,050	\$44,750
<b>60%</b>	\$28,500	\$32,580	\$36,660	\$40,680	\$43,980	\$47,220	\$50,460	\$53,700
<b>80% (low)</b>	\$38,000	\$43,400	\$48,850	\$54,250	\$58,600	\$62,950	\$67,300	\$71,650
<b>100% (median)</b>	\$47,500	\$54,300	\$61,100	\$67,800	\$73,300	\$78,700	\$84,100	\$89,500
<b>120%</b>	\$57,000	\$65,160	\$73,320	\$81,360	\$87,960	\$94,440	\$100,920	\$107,400